

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

KERRY L. BROWN,)	
)	
Petitioner,)	
)	
V.)	Civil No. 06-436-DRH-CJP
)	
JAY MERCHANT,)	
)	
Respondent.)	

ORDER

PROUD, Magistrate Judge:

Before the Court are two virtually identical motions “for judgment on the pleadings” (**Docs. 26 and 27**), and a proposed order granting petitioner final judgment (**Doc. 25**). Petitioner asserts that there are no questions of material fact and that he has demonstrated that he is entitled to judgment on his petition for writ of habeas corpus. Respondent has not filed anything in response to the aforementioned documents.

Petitioner’s motions are, in effect, duplicative of his petition and brief, and therefore will be stricken. A review of the record reveals that the parties have submitted their respective briefs. Respondent has challenged whether the Court has subject matter jurisdiction. (**See Doc. 18**). In accordance with Rule 10 of the Rules Governing Section 2254 Cases in the United States District Courts, the petition is under consideration by the undersigned Magistrate Judge, and a Report and Recommendation will be entered in due course.

Insofar as petitioner asserts that there are no material questions of fact that preclude entry of judgment, he appears to be referring to the standard for summary judgment prescribed in Federal Rule of Civil Procedure 56, which is not the standard of review applicable in this

situation. In a habeas petition, the facts determined by the State Court are presumed correct, and this Court must review the State conviction and sentence to determine if there has been an unreasonable application of federal law, or a decision based on an unreasonable determination of the facts in light of the evidence. **28 U.S.C. § 2254**. Of course, the Court must also ensure that it has jurisdiction over this action, which respondent has contested.

IT IS THEREFORE ORDERED that, for the aforestated reasons, petitioner's motions "for judgment on the pleadings" (**Docs. 26 and 27**), and the proposed order granting petitioner final judgment (**Doc. 25**) are hereby **STRICKEN**.

IT IS SO ORDERED.

DATED: January 25, 2008

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE